

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Atty. Docket: LOESSNER=1

In re Application of:) Conf. No.: 5123
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Martin LOESSNER et al) Office of Petitions
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Pat. No.: 7,438,901))
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Issued: October 21, 2008) Washington, D.C.
))
For: VIRULENT PHAGES TO CONTROL) December 24, 2008
) LISTERIA MONOCYTOGENES IN)
) FOODSTUFFS AND IN ...)

DECLARATION OF ERIN D. GERAGHTY

Honorable Commissioner for Patents
U.S. Patent and Trademark Office
Randolph Building, Mail Stop Amendments
401 Dulany Street
Alexandria, VA 22314

Sir:

I, the undersigned Erin D. Geraghty, hereby declare
and state as follows:

I have been an employee of Browdy and Neimark,
P.L.L.C. (hereinafter Browdy and Neimark), since August 31,
1992. I have risen through many positions, including head of
docketing, and currently have been office manager since
February 2005.

As part of my duties as office manager, I sat in on
meetings among attorneys at Browdy and Neimark to decide how
to best deal with the potential change in interpretation of

patent term adjustment that was mandated by a court case that, on information and belief, was issued on September 30, 2008.

It was decided that all issued patents for which the two month deadline for filing a request for reconsideration had not yet passed would be reviewed to see if they were potentially subject to an increased patent term adjustment due to the new interpretation endorsed by the court decision.

I understand that a patent was to be so flagged if the filing date or 371(c) date was more than three years prior to the date of issue or the date of first filing of an RCE.

For all patents so flagged, a letter was prepared by Mr. Roger L. Browdy, an attorney at Browdy and Neimark, and sent to the client for instructions as to whether or not a request for reconsideration would be filed.

Furthermore, for each of those cases, a new entry was created in the IPMaster electronic docketing system used by Browdy and Neimark showing a deadline for patent term adjustment of two months following the issue date.

When the first such request for reconsideration was prepared and filed, a format for such a document was prepared by Mr. Browdy and I was given this format as a guideline for future use.

In order to ease the workload on attorneys, I took it upon myself to prepare a first draft of each request for

reconsideration when authorized by a client, for review and a revision by the attorney.

Sometime in early December 2008, I received the paper file of the above-identified patent, no. 7,438,901, on which were the instructions from the client to prepare a request for reconsideration. These instructions were marked in the hand of Mr. Randy Davis, the docketing supervisor at Browdy and Neimark, with a due date of January 21, 2009. A copy of this email of instructions, as marked by Mr. Davis, is submitted herewith as Exhibit A.

I promptly prepared a draft request for reconsideration and set it with another draft request for reconsideration I had prepared in another case to be given to Mr. Browdy for review. It did not appear that there was any rush to do so as the file indicated that the deadline was January 21, 2009.

When I prepared the draft of the request for reconsideration, I should have noticed that the issue date was October 21, 2008, and that the docketed date was incorrect. However, this fact simply escaped my notice.

The files were given to Mr. Browdy on the morning of December 24, 2008, and he discovered the docketing error.

I am now working with Mr. Randy Davis to create a new rule in IPMaster that will permit the automatic generation of this date on cases that are deemed applicable.

I hereby further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

December 24, 2008
Date

/Erin D. Geraghty/
Erin D. Geraghty